



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2011-0686, FRL-9635-5]

Approval and Promulgation of Implementation Plans;
New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a proposed revision to the State Implementation Plan (SIP) submitted by the New Jersey Department of Environmental Protection for New Jersey's enhanced inspection and maintenance (I/M) program. New Jersey has made several amendments to its I/M program to improve performance of the program and has requested that the SIP be revised to include these changes. Chief among the amendments EPA is approving is New Jersey's amendment to its I/M program to establish a new exhaust emission test for gasoline fueled vehicles and the extension of the new vehicle inspection exemption from 4 years to 5 years. EPA is approving this SIP revision because it meets all applicable requirements of the Clean Air Act and EPA's regulations and because the revision will not interfere with attainment or maintenance of the national ambient air quality standards in the affected area. The intended effect of this action is to maintain consistency between the State-adopted rules and the federally approved SIP.

EFFECTIVE DATE: This rule will be effective [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2011-0686. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212-637-4249.

FOR FURTHER INFORMATION CONTACT: Jenna Salomone, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3741, salomone.jenna@epa.gov

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I. What Action is EPA Taking?

EPA is approving a revision, submitted by New Jersey on December 15, 2009, and a supplemental revision, submitted by New Jersey on October 12, 2010, to the New Jersey State Implementation Plan (SIP) pertaining to New Jersey's motor vehicle enhanced inspection and maintenance (I/M) program. New Jersey provided EPA with documentation on the emission impacts that will result from proposed changes to New Jersey's enhanced I/M program including a comparison to the EPA I/M performance standard. The revisions submitted by New Jersey include a new exhaust emission test for gasoline fueled vehicles; the extension of the new vehicle inspection exemption from 4 years to 5 years; the elimination of repair cost waivers; the increase in the inspection frequency (to annual) for certain classes of commercial vehicles such as limousines, taxis and jitneys; and the subjecting of light duty diesel vehicles to emissions testing.

II. What was included in New Jersey's Proposed SIP submittal?

On December 15, 2009, New Jersey submitted a revision to the State of New Jersey's I/M program SIP. The submittal consists of new rules and rule amendments to the New Jersey Department of Environmental Protection's rules at New Jersey Administrative Code (N.J.A.C.) 7:27-15, 7:27B-5 and the Motor Vehicle Commission rules at N.J.A.C. 13:20-7, 13:20-24, 13:20-

26, 13:20-28, 13:20-29, 13:20-32, 13:20-33, 13:20-43, 13:20-44, 13:20-45, and N.J.A.C. 13:21-15.8 and 13:21-15.12.

The proposed changes to New Jersey's I/M program include the establishment of a new exhaust emission test for gasoline fueled vehicles. The Two Speed Idle (TSI) test will replace both the Acceleration Simulation Mode (ASM5015) and 2500 Revolutions per Minute (RPM) tests. The TSI test is a tailpipe test which checks the vehicle's hydrocarbons, carbon monoxide, oxygen and carbon dioxide (HC, CO, O₂ and CO₂, respectively) exhaust emissions concentration levels at two different engine speeds, the regular idle and a fast idle around 2500 RPM. The ASM5015 test measures the concentrations of HC, CO and oxides of nitrogen (NO_x), in a vehicle's tailpipe emissions when a vehicle is running under marginal load and at a steady rate or RPM. The 2500 RPM test is a tailpipe test that checks the vehicle's HC, CO, O₂ and CO₂ exhaust emissions concentration levels at 2500 RPM.

The proposed changes to New Jersey's I/M program also include: the elimination of repair cost waivers, the increase in the inspection frequency (to annual) for certain classes of commercial vehicles such as limousines, taxis and jitneys, and the subjecting of light duty diesel vehicles to emissions testing. New Jersey provided documentation on the emission impacts that will result from proposed changes to New Jersey's I/M program including a comparison to the EPA I/M performance standard.

On October 12, 2010, New Jersey submitted a supplemental I/M program SIP revision which consisted of amendments to chapter 8 of Title 39 of the Revised Statutes of the state of New Jersey at R.S. 39:8-1, 39:8-2, and 39:8-3. The submittal includes an extension of the new vehicle inspection exemption from 4 years to 5 years and an acknowledgement with supporting justification that New Jersey's decentralized I/M network (the private inspection facilities, or PIFs) is currently 96 percent as effective as New Jersey's centralized I/M network (the centralized inspection facilities, or CIFs). PIFs were previously assumed to be 80 percent as effective as CIFs, which New Jersey considered to likely be very conservative in light of the program and technology changes that were implemented in the years following the 80 percent effectiveness assumption. In May 2010, New Jersey authorized MACTEC Engineering and Consulting, Inc. to assess improvements in effectiveness of the decentralized program and to determine a reasonable effectiveness fraction that may be supported by data and technical reasoning. MACTEC analyzed the effectiveness of the decentralized PIF network relative to the CIF (centralized) network. The relative effectiveness of PIFs was based on data collected from PIFs and CIFs in 2009. As a result of the analysis, MACTEC determined that New Jersey should increase the effectiveness factor for PIFs and provided the following justifications:

- Fail rates for OBD inspections in PIFs were found to be nearly identical to those in CIFs;
- An analysis of triggers for OBD tests performed in 2009 showed that over 99% of inspections in PIFs have no indications of fraud;
- New Jersey has implemented several additional OBD triggers in the new program, which will further reduce the incidence of fraud.

On July 8, 2010, New Jersey submitted to EPA the final report prepared by MACTEC, dated June 23, 2010 entitled “New Jersey Motor Vehicle Inspection Program PIF Effectiveness Study.”

On September 16, 2011 (76 FR 57691), EPA proposed to approve New Jersey’s revised I/M program. For a detailed discussion on the content and requirements of the revisions to New Jersey’s regulations, the reader is referred to EPA’s proposed rulemaking action.

III. What Comments Did EPA Receive in Response to its Proposal?

In response to EPA’s September 16, 2011 proposed rulemaking action, EPA received no comments.

IV. What are EPA's Conclusions?

EPA’s review of the materials submitted indicates that New Jersey has revised its I/M program in accordance with the requirements of the Clean Air Act, 40 CFR Part 51 and all of EPA’s technical requirements for an approvable Enhanced I/M program. EPA is approving the rules and rule amendments to the New Jersey Department of Environmental Protection’s rules at N.J.A.C 7:27-15, 7:27B-5 (replaces B-4), effective November 16, 2009, the Motor Vehicle Commission rules at N.J.A.C. 13:20-7, 13:20-24, 13:20-26, 13:20-28, 13:20-29, 13:20-32, 13:20-33, 13:20-43, 13:20-44, 13:20-45, and N.J.A.C. 13:21-15.8 (replaces 15.7), 13:21-15.12, all effective October 19, 2009 and the amendments to chapter 8 of Title 39 of the Revised Statutes of the state of New Jersey at R.S. 39:8-1, 39:8-2, and 39:8-3, effective July 1, 2010, which

incorporate New Jersey's motor vehicle inspection program requirements. The Clean Air Act gives states the discretion in program planning to implement programs of the state's choosing as long as necessary emission reductions are met.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to

each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 1, 2012.

Judith A. Enck,
Regional Administrator
Region 2

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 et seq.

Subpart FF - New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(92) to read as follows:

§52.1570 Identification of plan.

* * * * *

(c) * * *

(92) Revisions to the New Jersey State Implementation Plan (SIP) submitted by the New Jersey Department of Environmental Protection for New Jersey's enhanced inspection and maintenance (I/M) program, dated December 15, 2009.

(i) Incorporation by reference:

(A) Amendments to Chapter 27, Title 7 of the New Jersey Administrative Code, Subchapter 15, "Control and Prohibition of Air Pollution from Gasoline-Fueled Motor Vehicles," effective November 16, 2009, and Appendix B-5, "Air Test Method 5: Testing Procedures for Gasoline-Fueled Motor Vehicles," effective November 16, 2009.

(B) Amendments to Chapter 20, Title 13 of the New Jersey Administrative Code, Subchapter 7, “Vehicle Inspection” (Sections: 7.1, 7.2, 7.3, 7.4, 7.5, 7.6); Subchapter 24, “Motorcycles” (Section: 24.20); Subchapter 26, “Compliance With Diesel Emission Standards and Equipment, Periodic Inspection Program for Diesel Emissions, and Self-Inspection of Certain Classes of Motor Vehicles” (Sections: 26.2 and 26.16); Subchapter 28, “Inspection of New Motor Vehicles” (Sections 28.3, 28.4 and 28.6); Subchapter 29, “Mobile Inspection Unit” (Sections: 29.1, 29.2, 29.3); Subchapter 32, “Inspection Standards and Test Procedures To Be Used By Official Inspection Facilities”; Subchapter 33, “Inspection Standards and Test Procedures To Be Used By Licensed Private Inspection Facilities”; Subchapter 43, “Enhanced Motor Vehicle Inspection and Maintenance Program”; Subchapter 44, “Private Inspection Facility Licensing”; and Subchapter 45, “Motor Vehicle Emission Repair Facility Registration,” all effective October 19, 2009.

(C) Amendments to Chapter 21, Title 13 of the New Jersey Administrative Code, Subchapter 15, “New Jersey Licensed Motor Vehicle Dealers” (Sections: 15.8 and 15.12), effective October 19, 2009.

(D) Amendments to Chapter 8, Title 39 of the Revised Statutes of the State of New Jersey at R.S. 39:8-1, 39:8-2, and 39:8-3, effective July 1, 2010.

(ii) Additional material:

(A) December 15, 2009, letter from Mark N. Mauriello, Acting Commissioner, NJDEP, to Judith A. Enck, Regional Administrator, EPA, requesting EPA approval of a revision to the State of New Jersey's I/M program SIP.

(B) October 12, 2010, letter from Bob Martin, Commissioner, NJDEP, to Judith A. Enck, Regional Administrator, EPA, requesting EPA approval of the supplemental revision to the State of New Jersey's I/M program SIP.

(C) July 8, 2010, letter from Bob Martin, Commissioner, NJDEP, to Judith A. Enck, Regional Administrator, EPA, requesting EPA approval of the supplemental revision to the State of New Jersey's I/M program SIP.

3. Section 52.1605 is amended by:

- a. Revising the entry under Title 7, Chapter 27, for Subchapter 15;
- b. Removing the entry for Title 7, Chapter 27B: Subchapter 4;
- c. Adding new entry Title 7, Chapter 27B, Subchapter 5 in numerical order;
- d. Revising the entries under Title 13, Chapter 20 for Subchapters 7, 24, 26, 28, 29, 32, 33, 43, 44, and 45;
- e. Removing the entry for Title 13, Chapter 21, Subchapter 15, Section 15.7;
- f. Adding new entry Title 13, Chapter 21, Subchapter 15, Sections 15.8 and 15.12 in numerical order; and
- g. Adding new entry Title 39, Chapter 8, Subchapters 1, 2 and 3 in numerical order to read as follows:

§52.1605 EPA - approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
<p>* * * * *</p> <p>Title 7, Chapter 27</p> <p>* * * * *</p> <p>Subchapter 15, "Control and Prohibition of Air Pollution From Gasoline-Fueled Motor Vehicles."</p> <p>* * * * *</p> <p>Title 7, Chapter 27B</p> <p>* * * * *</p> <p>Subchapter 5, "Air Test Method 5: Testing Procedures For Gasoline-Fueled Vehicles."</p> <p>* * * * *</p> <p>Title 13, Chapter 20</p> <p>* * * * *</p> <p>Subchapter 7, "Vehicle Inspection." Sections: 7.1, 7.2, 7.3, 7.4, 7.5, 7.6.</p> <p>Subchapter 24, "Motorcycles." Section 20</p> <p>Subchapter 26, "Compliance With Diesel Emission Standards and Equipment, Periodic Inspection Program for Diesel Emissions, and Self-Inspection of Certain Classes of Motor Vehicles." Section: 26.2, 26.16</p>	<p>November 16, 2009</p> <p>November 16, 2009</p> <p>November 19, 2009</p> <p>November 19, 2009</p> <p>November 19, 2009</p>	<p>[Insert date of publication and Federal Register page citation]</p> <p>[Insert date of publication and Federal Register page citation]</p> <p>[Insert date of publication and insert FR page citation]</p> <p>[Insert date of publication and insert FR page citation]</p> <p>[Insert date of publication and insert FR page citation]</p>	

Subchapter 28, "Inspection of New Motor Vehicles." Sections: 28.3, 28.4, 28.6.	November 19, 2009	[Insert date of publication and insert FR page citation]	
Subchapter 29, "Mobile Inspection Unit." Sections: 29.1, 29.2, 29.3.	November 19, 2009	[Insert date of publication and insert FR page citation]	
Subchapter 32, "Inspection Standards and Test Procedures To Be Used By Official Inspection Facilities."	November 19, 2009	[Insert date of publication and insert FR page citation]	
Subchapter 33, "Inspection Standards and Test Procedures To Be Used By Licensed Private Inspection Facilities."	November 19, 2009	[Insert date of publication and insert FR page citation]	
Subchapter 43, "Enhanced Motor Vehicle Inspection and Maintenance Program."	November 19, 2009	[Insert date of publication and insert FR page citation]	
Subchapter 44, "Private Inspection Facility Licensing."	November 19, 2009	[Insert date of publication and insert FR page citation]	
Subchapter 45, "Motor Vehicle Emission Repair Facility Registration."	November 19, 2009	[Insert date of publication and insert FR page citation]	
Title 13, Chapter 21 * * * * *			
Subchapter 15, "New Jersey Licensed Motor Vehicle Dealers." Sections 15.8 and 15.12 * * * * *	November 19, 2009	[Insert date of publication and insert FR page citation]	
Title 39, Chapter 8 Subchapters 1, 2 and 3	July 1, 2010	[Insert date of publication and insert FR page citation]	

[FR Doc. 2012-6208 Filed 03/14/2012 at 8:45 am; Publication Date: 03/15/2012]